SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 518

PATRICK CUDAHY FAMILY COMPANY,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

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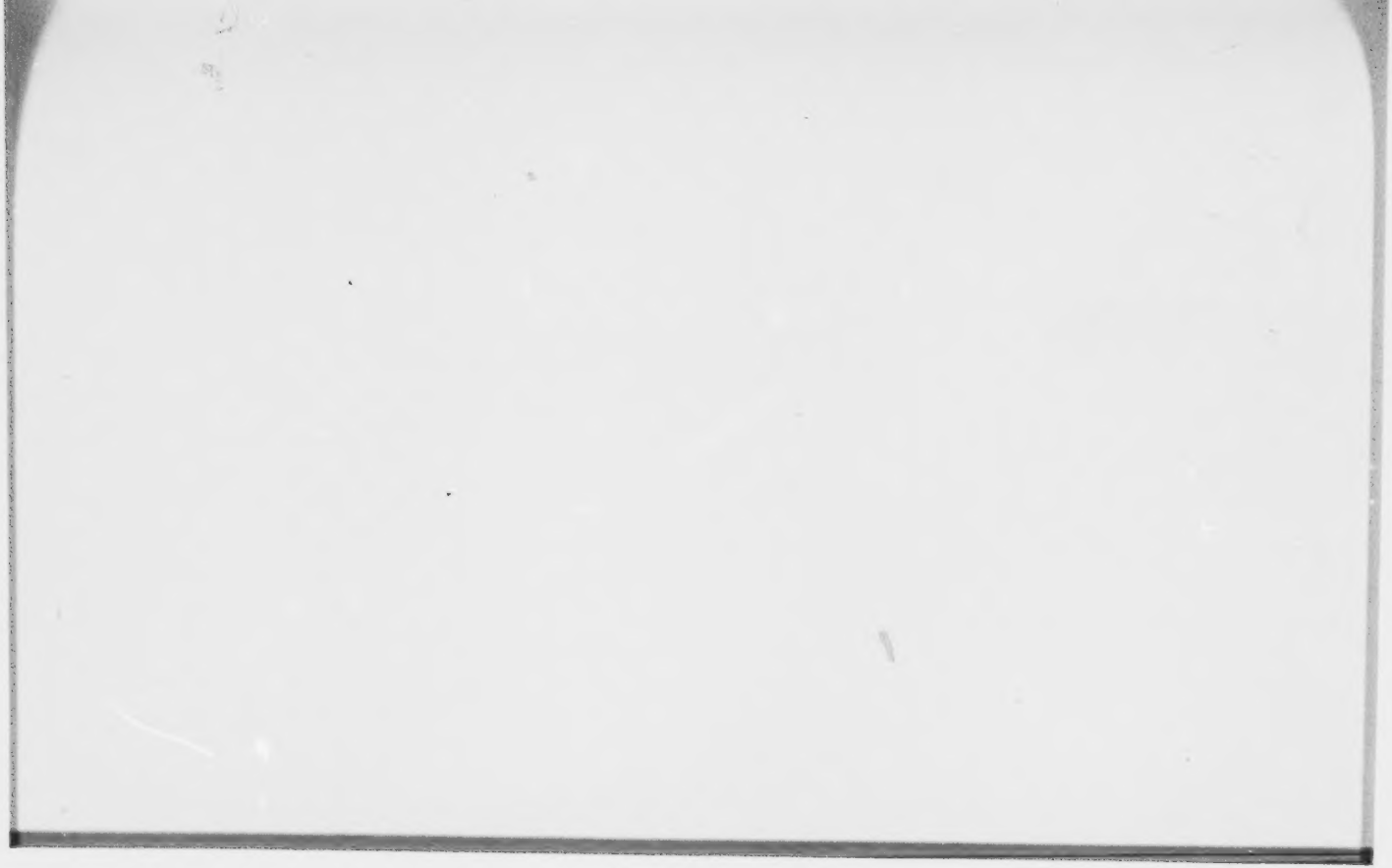

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 518

PATRICK CUDAHY FAMILY COMPANY,
Petitioner and Complainant Below,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR,
Respondent and Respondent Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

Summary Statement of Matter Involved.

This proceeding was brought by way of a suit by petitioner in the United States Emergency Court of Appeals to review an order of the Price Administrator (acting through the Regional Director of Region VI) dated May 21, 1943 (R. 34) which order denied a prctest of the petitioner (R.

10) against an order (R. 43) of the Rent Director of the Milwaukee Defense-Rental Area which order had denied petitioner's petition for an adjustment of rent of a housing unit owned by petitioner.

On January 16, 1939, petitioner, a Wisconsin corporation, as landlord, leased apartment #717-8 in the Cudahy Tower located in Milwaukee County, Wisconsin, to a tenant for a term of two years beginning May 1, 1939, at a rental of $150.00 per month (R. 14-26). The lease contained the following provision:

> "It is mutually agreed and understood that this lease shall stand, without notice from either party, renewed on identical terms for a like successive period unless either party shall at least 60 days before the expiration of the demised period notify the other in writing to the contrary" (R. 22).

Neither party gave any notice under the above clause so that the rent on March 1, 1942, was $150.00 per month.

On July 24, 1942, the Price Administrator, without notice, adequate opportunity for hearing or proper findings of fact, issued Maximum Rent Regulation #35 effective August 1, 1942, covering Milwaukee County, Wisconsin, which retroactively fixed all rents in effect on March 1, 1942, in that area as the maximum rent which could be charged for a housing accommodation, subject to adjustment within the discretion of the Administrator upon certain grounds (R. 44-58). One of the grounds upon which a landlord could petition the Administrator to try to obtain relief to adjust the rental above that being collected on March 1, 1942, is set forth in Sec. 1388.3055 (a) (5) as amended November 23, 1942, reading as follows:

> "There was in force on March 1, 1942, a written lease, for a term commencing on or prior to March 1, 1941, requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area

for comparable housing accommodations on March 1, 1942 * * *" (R. 59).

On March 1, 1942, the petitioner was renting two other identical apartments in the same building in the same tier of apartments, one above and one below the apartment in question, at $175.00 per month (R. 12). The generally prevailing rent in the area for housing accommodations comparable to apartment No. 717-8, was not less than $175.00 per month and $150.00 per month was substantially below such general prevailing rent for comparable accommodations in the Defense-Rental Area in question on March 1, 1942 (R. 12; Comp. p. 3; R. 3; Answ. p. 1; R. 6).

The landlord (petitioner here) on October 28, 1942, petitioned the local Rent Director for an adjustment of the rent of the unit involved to $175.00 per month upon the grounds set forth in the above quoted section of the Regulations (R. 37-42), namely that the rent of apartment No. 717-8 on March 1, 1942 was substantially lower than the generally prevailing rent for similar accommodations because there was in effect a written lease for a term commencing on or prior to March 1, 1941.

This was the only possible grounds set out in the Regulation under which petitioner might possibly get relief. The petition for adjustment of rent was denied by the local Area Rent Director on January 16, 1943 (R. 43) and petitioner filed its protest therefrom, (R. 10-13) which protest was denied on May 21, 1943 by the respondent Price Administrator acting through the Regional Director upon his opinion that the lease on the apartment in question was not for a term commencing on or prior to March 1, 1941 (R. 34-36). Therefore, petitioner was denied any relief although concededly he would be forced to charge less than an adequate rent for his property, if the Regulation and the Administrator's ruling were valid.

Petitioner then commenced this action in the Emergency Court of Appeals by filing its complaint on June 16, 1943, challenging the validity of the Administrator's order and Regulation (R. 3-4) and on September 1, 1943 it moved to amend its complaint to add a paragraph as follows:

> "13. In the event that the Emergency Price Control Act be so construed as to authorize the Administrator to issue a Regulation which would permit the result contended for by the Administrator, then and in such event the said Act is unconstitutional and invalid as being in violation of the fifth Amendment to the Constitution of the United States, in that it would result in the deprivation or taking of property without due process of law and further, would be invalid as being in violation of the Constitution of the United States in constituting an unlawful delegation of legislative power and in authorizing an arbitrary and capricious action by an administrative agency" (R. 61-62).

The Court below denied this motion on September 23, 1943 (R. 63) and on the same date heard oral argument upon this case. On November 2, 1943 the Court rendered its opinion (R. 65-67) and entered the Judgment sought to be reviewed here, (R. 69), which judgment discussed the complaint.

II.

Basis of This Court's Jurisdiction to Review the Judgment.

1. The date of the judgment to be reviewed is November 2, 1943, and the date of this petition for writ of certiorari is December 1, 1943.

2. The statutory provision which sustains the jurisdiction of this Court is Sec. 204 (d) of the Emergency Price Control Act of 1942, Public Law No. 421, 77th Congress, 2nd Session, Chapter 26, 56 Stat.—which provides as follows:

> "Within thirty (30) days after entry of a judgment or order, interlocutory or final, by the Emergency

Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment in a Circuit Court of Appeals as provided in section 240 of the Judicial Code, as amended (U. S. C.; 1934 Ed., Title 28, Sec. 347).—"

3. The statute, the constitutionality, construction and application of which is involved, is the said Emergency Price Control Act of 1942 which, in substance, delegates to the Administrator of the Office of Price Administration the power to fix prices of commodities and to fix rents for housing accommodations anywhere throughout the United States at such rates as in his judgment he deems fair and equitable. Only the portion of the Act relating to rents is here involved.

III.

Questions Presented.

1. May not the validity of the Emergency Price Control Act of 1942 or of a maximum Regulation of the Price Administrator issued pursuant thereto be raised for the first time upon an appeal to the Emergency Court of Appeals from an order denying a landlord's petition for relief from an order of the Price Administrator purporting to be made pursuant to his Regulation, in view of the provisions of the Act which confer exclusive jurisdiction upon the Emergency Court of Appeals to pass upon questions of the validity of the Act and to review the Regulations and orders of the Price Administrator.

2. Is the Emergency Price Control Act of 1942 unconstitutional as

A. Illegally delegating legislative power to the Price Administrator; and

B. Being in violation of the due process clause of the Fifth Amendment because no lawful standard is prescribed in the Act for determining reasonable rent rates?

3. Is the challenged rent Regulation unconstitutional and void as being in violation of the due process clause of the Fifth Amendment of the Federal Constitution in that

A. It retroactively fixes rents and thus injuriously effects fixed contract rights of owners of rented property; and

B. It fixes rents arbitrarily without reference to a reasonable rate and requires the furnishing of service even though it be at a loss; and

C. It retroactively fixed rates without lawful notice, findings of fact or effective opportunity for the parties concerned to be heard.

4. Does the judgment of the Court below confirm an arbitrary and capricious action of the Price Administrator in applying his Regulation to the facts presented upon the petition of this landlord for relief?

IV.

Reasons Relied On for Allowance On Writ.

1. The Emergency Court of Appeals has decided an important question of federal and administrative law which has not, but should be, settled by this Court, namely, whether in order to question the validity of the Emergency Price Control Act of 1942 or of a Regulation issued pursuant thereto, the questions of such validity must first be raised before the Price Administrator and if not so raised, will not be considered by the Emergency Court of Appeals. This holding conflicts with the provisions of the Emergency Price Control Act of 1942 and with the hold-

ings of this Court to the effect that the construction of statutes ultimately is solely for the Courts.

Sections 204(a) and 204(d) of Public Law No. 421, 77th Congress, 2nd Session, Chapter 26.

Chicago, Milwaukee & St. Paul RR. v. *McCaull Dinsmore Co.*, 253 U. S. 97, 40 Sup. Ct. 504, 64 L. Ed. 80.

Hormel v. *Helvering*, 312 U. S. 552, 61 Sup. Ct. 35, 85 L. Ed. 1037.

2. The Emergency Court of Appeals has by implication decided an important and vital question of federal law involving the rights of millions of citizens, namely, that the Emergency Price Control Act of 1942 is constitutional which question of law should be, but has not been, settled by this Court. The details of the constitutional question are whether the rent fixing provisions of the Emergency Price Control Act of 1942 are unconstitutional as

A. Illegally delegating legislative power.

Panama Refining Company v. *Ryan*, 293 U. S. 388, 55 Sup. Ct. 241, 79 L. Ed. 446;

Field & Co. v. *Clark*, 143 U. S. 649, 36 L. Ed. 294;

Wichita RR. v. *Public Utilities Commission*, 260 U. S. 48, 43 Sup. Ct. 51, 67 L. Ed. 124.

B. As being in violation of the due process clause of the Fifth Amendment because no lawful standard is prescribed in the Act for determining reasonable rent rates.

St. Joseph Stockyards Co. v. *United States*, 298 U. S. 38, 56 Sup. Ct. 720, 80 L. Ed. 1033.

3. The Emergency Court of Appeals, by its decision, has sanctioned an arbitrary and capricious action of an administrative officer in sustaining his maximum rent regulation which is unconstitutional and void as being in vio-

lation of the due process clause of the Fifth Amendment, and the decision sanctioning such a regulation requires the exercise of this Court's power of supervision in order to correct such decision. The Regulation is invalid because:

A. It retroactively fixes rents thus injuriously affecting the vested contract rights of the owners of rented property.

Block v. *Hirsh*, 256 U. S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865.

Edgar A. Levy Leasing Co. v. *Siegel*, 258 U. S. 242, 42 Sup. Ct. 289, 66 L. Ed. 595.

Nichols v. *Coolidge*, 274 U. S. 531, 47 Sup. Ct. 710, 71 L. Ed 1184.

Welch v. *Henry*, 305 U. S. 134, 59 Sup. Ct. 121, 83 L. Ed. 87.

B. It arbitrarily fixes rents without reference to a reasonable rate and requires the furnishing of service even at a loss.

Block v. *Hirsh*, 256 U. S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865.

Railroad Commission v. *Eastern Texas Railroad Co.*, 264 U. S. 79, 44 Sup. Ct. 247, 68 L. Ed. 569.

C. It retroactively fixes rents without lawful notice, proper findings of fact or adequate opportunity for the parties concerned to be heard.

St. Joseph Stockyards Co. v. *United States*, 298 U. S. 38, 56 Sup. Ct. 720, 80 L. Ed. 1033.

Mahler v. *Eby*, 264 U. S. 32, 44 Sup. Ct. 283, 68 L. Ed. 549.

Morgan v. *United States*, 304 U. S. 1, 58 Sup. Ct. 773, 82 L. Ed. 1129.

4. The Emergency Court of Appeals, by its decisions, has confirmed an arbitrary and capricious action of the

Price Administrator in permitting him to apply his rent regulation to the facts presented upon the petitioner's application for relief so as to conflict with and disregard the applicable local law and decisions in his holding that the law of the state in which real estate is situated does not govern in matters affecting such real estate under the Price Control Act and the lower court by sustaining such decision has decided an important question of local law in conflict with the local decisions and the decisions of this Court.

Supreme Court Rule No. 38(5) b, 83 L. Ed. 1654.

Sunderland v. *United States*, 266 U. S. 226, 45 Sup. Ct. 64, 69 L. Ed. 259.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the United States Emergency Court of Appeals commanding that said court certify and send to this Court a full and complete transcript of the record and of the proceedings of said United States Emergency Court of Appeals had in the case numbered and entitled on its docket #55, "*Patrick Cudahy Family Company, a corporation, Complainant,* v. *Chester Bowles, Price Administrator, Respondent,*" to the end that this case may be reviewed and determined by this Court as provided for by the Statutes of the United States and that the judgment therein of said United States Emergency Court of Appeals be reversed by this Court, and for such further relief as this Court may deem proper.

Dated November 30th, 1943.

RICHARD H. TYRRELL,
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JACKSON M. BRUCE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 518

PATRICK CUDAHY FAMILY COMPANY,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion of the United States Emergency Court of Appeals is reported in the Pike & Fischer OPA Service, page 612:49. We believe it has not yet been reported in an official report of the Court.

II.

Jurisdiction.

The statutory provisions, which it is believed sustained the jurisdiction of this Court, and also the facts relating to jurisdiction, have already been stated in the Petition for

Writ of Certiorari at Section II thereof, which statement, with respect to jurisdiction, is hereby adopted and made a part of this brief.

III.

Statement of the Case.

The statement of the case has already been set forth in the Petition for Writ of Certiorari in connection with which this brief is filed, under Section I thereof entitled "SUMMARY OF MATTER INVOLVED" and said statement is hereby adopted and made a part of this brief.

IV.

Specification of Errors.

The "specification of errors", which are the issues which would be before the Court when the case is presented on its merits, if certiorari is granted, are the same as the "questions presented" which are set forth in Section III of the Petition for Writ of Certiorari and are here set out in the affirmative form of a list of errors of the Emergency Court of Appeals.

1. The Emergency Court of Appeals erred in holding that the validity of a Regulation of the Price Administrator could not be raised for the first time in the Emergency Court of Appeals and, by implication, in holding the validity of the Emergency Price Control Act of 1942 could not be raised for the first time in the Emergency Court of Appeals which is contrary to the provisions of the Act which confer exclusive jurisdiction to decide such questions on the Emergency Court of Appeals.

2. The Emergency Court of Appeals erred in failing to hold that the Emergency Price Control Act of 1942

A. Is void for the reason that it illegally delegates legislative power to the Price Administrator; and

B. Is void as in violation of the due process clause of the Fifth Amendment to the Federal Constitution because no lawful standard for determining reasonable rent rates is provided in the Act.

3. The Emergency Court of Appeals erred in failing to hold that the challenged rent fixing Regulation is unconstitutional and void as being in violation of the due process clause of the Fifth Amendment to the Federal Constitution in that

A. It is retroactive in its operation and thus injuriously affects vested contract rights of the owners of rented property; and

B. It fixes rental rates arbitrarily and without reference to a reasonable rate and requires the furnishing of service even though it be at a loss; and

C. It retroactively fixed rates as of March 1, 1942, without lawful notice, findings of fact or effective opportunity for the affected parties to be heard.

4. The Emergency Court of Appeals erred in failing to hold that the action of the Price Administrator was arbitrary and capricious in applying his Regulation to the facts presented upon the application of the petitioner for relief.

V.

Summary of Argument.

Point A. The Court below erroneously decided an important question of federal administrative law in holding in substance that an administrative officer can and must pass upon the constitutionality of the Act which created his office and upon the validity of his own regulations before the reviewing court will entertain such questions. This decision conflicts with the Act itself and the holdings of

this Court and the decision should be corrected by this Court because of its far-reaching importance.

Point B. The lower court by necessary implication decided that the Price Control Act of 1942 is constitutional and because of its vital importance to millions of citizens the decision should be reviewed by this Court. It is the position of petitioner that the Act is, in fact, unconstitutional because

A. It illegally delegates legislative power, and

B. Violates the due process clause in failing to prescribe standards for fixing rents.

Point C. The court below erroneously sanctioned an arbitrary and capricious action of an administrative officer in sustaining his rent regulation which is unconstitutional and void and because of the far-reaching vital effect of the Regulation the decision of this Court is necessary. The regulation is invalid because it

A. Retroactively fixed rents injuriously affecting vested contract rights;

B. Arbitrarily fixed rents without reference to reasonable rates and required furnishing service at a loss;

C. Retroactively fixed rents without lawful notice, adequate opportunity to be heard or proper findings of fact.

Point D. The Court below decided an important question of local law in conflict with local decisions and the decisions of this Court by its holding that such regulations supersede the local law governing real estate.

VI.

Argument.

Point A.

As to the Regulation: The Emergency Court of Appeals, in its opinion, held that the Price Administrator's order on petitioner's protest was permissible under the maximum rent Regulation #35 and in so holding, by necessary implication, the Court held that Regulation was valid. The Court below said "A protest against an order denying an application for adjustment does not open for review the validity of the Regulation itself * * *" (R. 65), thus holding that the Regulation cannot be attacked in the Court unless it has been questioned before the Administrator who issued the Regulation. Under the Act, Section 203 (a) * a protest against a general Regulation could only be made in the first 60 days after the Regulation is promulgated. This ruling of the Court amounts to a practical denial to virtually every person affected of ever having a Court's determination of the validity of the Regulation because parties affected by the general Regulation did not know how it affected them until a specific situation arose under the Act and practically no one knew within 60 days after the Regulation was promulgated how it was going to affect him. In fact very few people knew what the Regulation meant until months of experience with it had elapsed.

In the instant case it was not until the tenant had died long after the Regulation had been promulgated and the landlord was free to contract for a new rental that it learned how the Regulation affected him and that the Administrator claimed it required him to charge an inequitable rent substantially below the fair and reasonable rent. He then promptly petitioned the Administrator for relief under

* See Appendix.

the Regulation and it was not until the Administrator had construed his own Regulation as not affording petitioner with relief that petitioner was aggrieved.

By that time any opportunity to make a general protest against the whole Regulation had long since passed and the petitioner's only recourse was to appeal from the order as being arbitrary and capricious and being not in accordance with the Regulation, or if it was in accord therewith, then that the Regulation itself was arbitrary and invalid.

The Court, by saying in substance that the landlord could have no court review of the general Regulation because the landlord failed to protest against that Regulation within 60 days after it was adopted, and before the landlord even knew that the Administrator would arbitrarily and capriciously deny him relief in effect says the landlord should have foreseen in advance an arbitrary and capricious action upon the part of the Administrator and says that since he failed to foresee such action he has no recourse to the courts. It would seem to require the landlord to have protested against something before he had been harmed or could have known he would be harmed.

Section 204 (a) of the Act specifically provides as follows:

> "Any person who is aggrieved by the denial or partial denial of his protest may, within thirty (30) days after such denial file a complaint with the Emergency Court of Appeals created pursuant to Sub-section 6 specifying his objections and praying that the Regulation, order or price schedule protested be enjoined or set aside in whole or in part."

That is exactly the procedure followed by the petitioner. He had first sought relief from the Administrator upon the facts. He claimed the Regulation afforded him relief and obviously he was attacking the Regulation itself if it were as construed that it didn't afford him relief. His very protest called in question the Regulation itself.

While it may be argued that technically and strictly construed the petitioner's protest did not explicitly, in the first instance, attack the general Regulation excepting only as that was naturally implied in the petitioner's request to the Administrator for relief from the fact situation in which he had been placed, as this Court said in *Hormel* v. *Helvering*, 312 U. S. 552, 61 Sup. Ct. 719, 85 L. Ed. 1037.

> "There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below. See Blair *v.* Oesterlein Mach. Co., 275 U. S. 220, 225, 72 L. ed. 249, 252, 48 S. Ct. 87.
>
> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice."

And as held in that case the Court will take hold of a situation that demands its action even though a party may have inadvertently failed to fully comply with all the procedural requirements of an administrative agency.

That is particularly true of this particular requirement of this Act as pointed out in *Payne* v. *Griffin*, U. S. Dist. Ct. M. D. Georgia decided August 30, 1943, 51 Fed. Supp. 588, where the court said:

> "After the administrator fixes the maximum rent, the provision for protest and appeal, it is said, affords due process. It might do so theoretically but not actually. In the Morgan case supra, the court held that, 'In administrative proceedings of a quasi-judicial

character, the liberty and property of the citizen must be protected by the rudimentary requirements of fair play. These demand a fair and open hearing.'

"People know they are charged with knowledge of the law but, without actually knowing the law, they have been accustomed to make defenses only when the law is sought to be enforced against them. An act which permits an administrator to fix prices without notice or hearing and then makes those prices conclusive after 60 days would, in practical operation, have the effect of cutting off defenses. That is especially true where the procedure provided makes it too inconvenient and expensive for individuals in small cases to follow the procedure. Ordinarily, when Congress itself passes a law, it does not try to make the law immune from attack or prohibit defenses but permits defenses to be made at any time an individual is proceeded against under the law. If the matter is subject to very strict construction, then this act may technically provide due process, but practically it would result in entrapping a large number of citizens. That might not constitute the fair play intended by the Supreme Court."

As to the Act:

Furthermore, the opinion of the Court below in holding the order under the Regulation to be binding, holds by necessary implications that the Act itself is constitutional and by its holding that no objection not specifically presented to the Administrator will be reviewed by the Court, holds in effect that there must be presented to the Administrator the question of the constitutionality of the law before the Court will pass upon it.

This is expressly in contravention to Section 204 (d) of the Act which provides in substance as follows:

"The Emergency Court of Appeals and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive

jurisdiction to determine the validity of any Regulation or order issued under Section 2 of any price schedule effective in accordance with the provisions of Section 206 and of any provision of any such Regulation, order or price schedule, except as provided in this Section, no court, Federal, State or Territorial, shall have jurisdiction or power to consider the validity of any such Regulation, order or price schedule, or to stay, restrain, enjoin or set aside, in whole or in part, any provision of this Act authorizing the issuance of said Regulations or orders * * *"

Not only is the decision in the Court below in refusing to consider the constitutionality of the Act unless that question was raised before the Administrator, contrary to the above quoted Section of the Act itself, but it is contrary to the decisions of this Court which hold in substance with respect to the powers of administrative bodies, that the construction of statutes and other laws is a matter which ultimately is solely for the courts and that it is their solemn duty to exercise such power and that they cannot surrender or waive the same. It is the laws which must govern rather than an executive or administrative officer's opinion.

C. M. St. P. & P. R. R. Co. vs. *McCaull-Dinsmore Company* 253 U. S. 97, 64 L. Ed. 801, 40 Sup. Ct. 504.

U. S. v. *Dickson*, 15 Pet. (U. S.) 141, 10 L. Ed. 689.

Point B. As indicated in Point A the Court, in upholding the validity of the Regulation of the Price Administrator issued pursuant to the Emergency Price Control Act of 1942 and further in denying petitioner's motion to amend its complaint on the subject of the constitutionality of the Act by necessary implication held the Act to be constitutional.

This Act authorized a far-reaching and wide-sweeping scheme for rent control and prices of commodities affect-

ing millions, if not actually all, of the citizens throughout the country. Extremely serious and vital questions are involved in the interpretation of the Act, which questions will be before this Court on the merits in the event that this petition is granted.

Magnum Import Co. v. *Coty*, 262 U. S. 159, 43 Sup. Ct. 531, 67 L. Ed. 922.

The Act illegally delegates legislative power in permitting the Administrator to fix rents which, in his judgment, will be fair and equitable without setting up a sufficient standard for his guidance.

Field & Co. v. *Clark*, 143 U. S. 649, 36 L. Ed. 294.

Wichita Railroad v. *Public Utilities Commission*, 260 U. S. 48, 43 Sup. Ct. 51, 67 L. Ed. 124.

Hampton & Co. v. *U. S.*, 276 U. S. 394, 48 Sup. Ct. 348, 72 L. Ed. 624.

Panama Refining Company v. *Ryan*, 293 U. S. 388, 55 Sup. Ct. 241, 79 L. Ed. 446.

St. Joseph's Stock Yards Co. v. *U. S.* 298 U. S. 38, 56 Sup. Ct. 720, 80 L. Ed. 1033.

The Act, further, in failing to prescribe standards for fixing rent, violates the due process clause of the Fifth Amendment to the federal constitution as held in the cases just above cited and also in *Morgan* v. *U. S.* 304 U. S. 1, 58 Sup. Ct. 773, 82 L. Ed. 1129.

It is sufficient to repeat, for the purpose of this petition, that this law is highly important to millions of citizens, both landlords and tenants, involves wide-sweeping control of private property, seriously affects the entire economic structure of the nation and has been before numerous lower courts of the land in one phase or another. Its constitutionality has not as yet been, but should be, finally settled by the decision of this Court.

Point C. The decision of the lower court, in sustaining his rent Regulation, sanctions an arbitrary and capricious action of an administrative officer. This rent Regulation is unconstitutional and void because:

A. It retroactively fixed rents injuriously affecting vested contract rights.

Block v. *Hirsh,* 256 U. S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865.

Edgard A. Levy Leasing Co. v. *Siegel,* 258 U. S. 242, 42 Sup. Ct. 289, 66 L. Ed. 595.

Nichols v. *Coolidge,* 274 U. S. 531, 47 Sup. Ct. 710, 71 L. Ed. 1184.

Welsh v. *Henry,* 305 U. S. 134, 59 Sup. Ct. 121, 83 L. Ed. 87.

B. It arbitrarily fixed rents without reference to reasonable rates and required furnishing of service at a loss.

Railroad Commission v. *Eastern Texas Railroad Co.,* 264 U. S. 79, 44 Sup. Ct. 247, 68 L. Ed. 569.

C. It retroactively fixed rents without lawful notice, adequate opportunity to be heard or proper findings of fact.

Nichols v. *Coolidge,* 274 U. S. 531, 47 Sup. Ct. 710, 71 L. Ed. 1184.

Welch v. *Henry,* 305 U. S. 134, 59 Sup. Ct. 121, 83 L. Ed. 87.

St. Joseph Stockyards Co. v. *U. S.,* 298 U. S. 38, 56 Sup. Ct. 720, 80 L. Ed. 1033.

Mahler v. *Eby,* 264 U. S. 32, 44 Sup. Ct. 283, 68 L. Ed. 549.

Morgan v. *United States,* 304 U. S. 1, 58 Sup. Ct. 773, 82 L. Ed. 1129.

This action of the lower court in sanctioning such an arbitrary and capricious Regulation and action and per-

mitting an administrative officer to issue and endeavor to enforce a wholly invalid but vital, important and far-reaching Regulation, requires this Court to exercise its supervisory power to correct the erroneous decision.

Point D. On March 1, 1942, because of a contract under which the particular landlord had been unable, for more than a year prior thereto to increase the rent, the landlord was receiving a rent substantially below the prevailing rent for similar housing accommodations,—in other words, it was receiving an unfair and inequitable rent. The Price Administrator, without notice, without hearing, without findings of fact, five months later, retroactively froze rents as of March 1, 1942, and failed to make adequate provision for relief against an inequitable situation such as disclosed by the facts here,—at least, the Price Administrator's position in this case is that he had failed to make provision for any such relief. Such a situation amounts to an unconstitutional deprivation of private property by the capricious act of an administrative official without due process of law.

The Price Administrator in his orginal rent fixing Regulation had made provisions for relief in a few cases, one of which petitioner believed was applicable to it. Had the local law of Wisconsin been applied as it should have been to the interpretation of the Wisconsin rental contract involved, which contract involves the transfer of an interest in and the use and possession of Wisconsin real estate, it would have been held below that the term of the rental agreement here involved commenced May 1, 1939. *Sheppard* v. *Rosenkrans* 109 Wis. 58, 85 N. W. 199.

It would also have been held that February 28, 1941, was the last date on which the landlord could have given notice that the lease would terminate on April 30, 1941. *Ward* v. *Walters* 63 Wis. 39, 22 N. W. 844.

Under either of those conclusions the landlord would have been clearly entitled to the relief afforded by Section 1388.3055 (a) (5) of the Regulation #35 which grants relief if

> "There was in force on March 1, 1942, a written lease, for a term commencing on or prior to March 1, 1941, requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on March 1, 1942 * * *." (R. 59)

To justify his denial of relief to petitioner, the Administrator had to resort to the proposition that the general rule that the lex loci rei sitae governs, does not apply to his Regulations. The Court below upheld his contention and in so doing ignored the local law and rendered an important decision contrary to the decisions of this Court and of the courts of nearly every other jurisdiction.

> "A principle of law which is acquiesced in by the jurists of all civilized nations and thus part of the jus gentium is that all real or immovable property is exclusively subject to the laws of the country within which it is situated, and no interference with it by any other sovereignty can be permitted. Therefore, *all matters* concerning the title and disposition of real property are determined by what is known as the lex loci rei sitae, which can alone prescribe the mode by which a title to it can pass from one person to another or an interest therein of any sort can be gained or lost. This general principal includes all rules which govern the descent, alienation, and transfer of such property and the validity, effect and construction of wills and other conveyances." 11 Am. Jur. 328. (Our italics)
>
> *Sunderland* v. *United States*, 266 U. S. 226, 45 Sup. Ct. 64, 69 L. Ed. 259.

Conclusion.

It is respectfully urged that this Court should grant the petition prayed for to the end that extremely important questions of far-reaching national importance may be properly decided.

Respectfully submitted,

RICHARD H. TYRRELL,
Counsel.
JACKSON M. BRUCE,
Of Counsel.

APPENDIX.

Pertinent Portions of *Emergency Price Control Act* of 1942; Chapter 26, 2nd Session, 77th Congress, Public Law 421.

Sec. 2 (b)

"Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs. In designating defense-rental areas, in pre-

scribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

(c)

"Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order."

Sec. 203 (a)

"Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or

price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date, thereof specified in section 206) in respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

(b)

"In the administration of this Act the Administrator may take official notice of economic data and other facts, including facts found by him as a result of action taken under section 202.

(c)

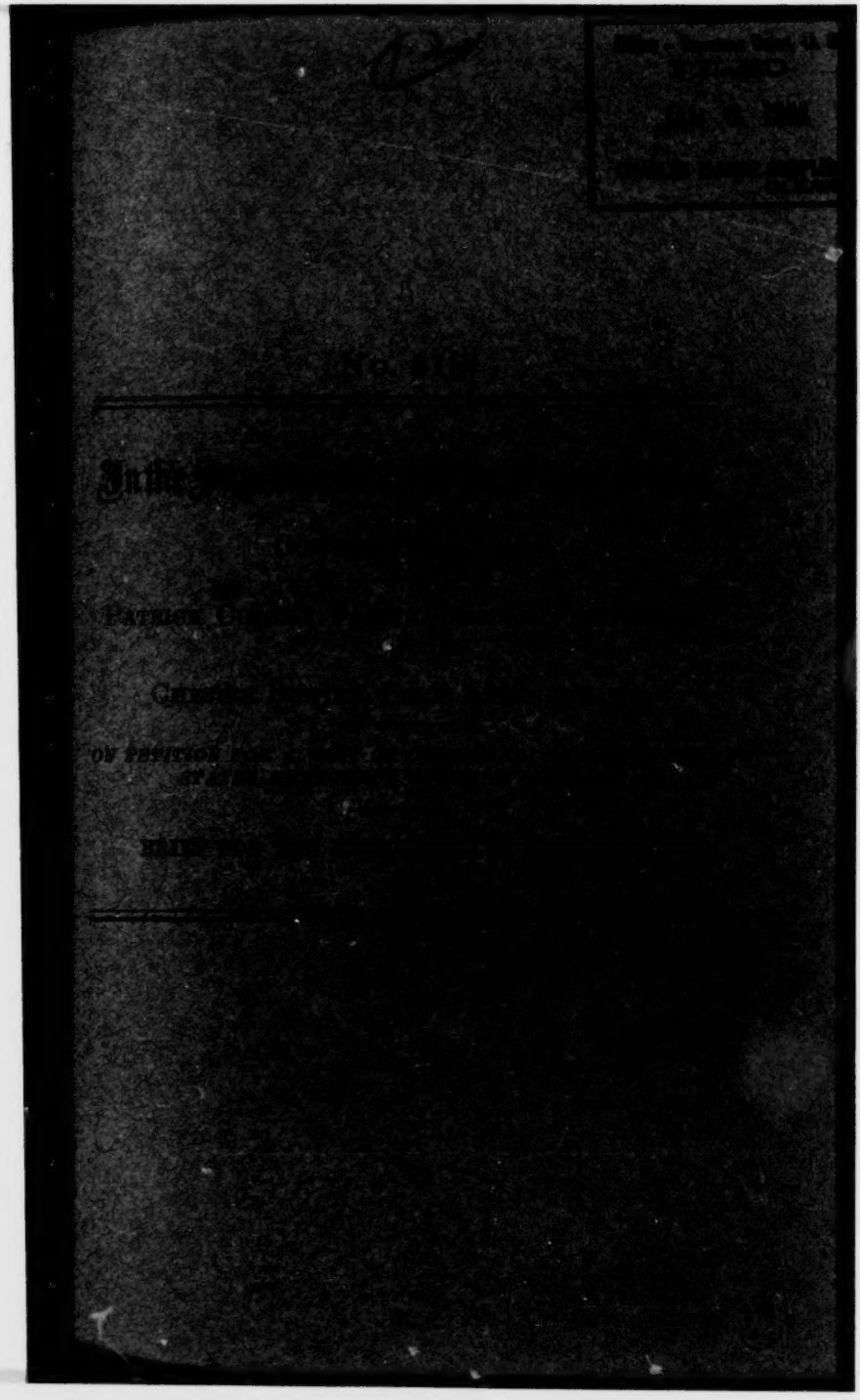
"Any proceedings under this section may be limited by the Administrator to the filing of affidavits, or other written evidence, and the filing of briefs."

Sec. 204 (a)

"Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. * * *"

Sec. 204 (d)

"Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."



INDEX

CITATIONS

566659—44

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 518

PATRICK CUDAHY FAMILY COMPANY, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 65–67) is not yet reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on November 2, 1943 (R. 69). The petition for a writ of certiorari was filed December 1, 1943. Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 765 (sometimes referred to herein as "the Act").

QUESTIONS PRESENTED

1. Whether objections to the constitutionality of the Act or of Maximum Rent Regulation No. 35 were properly raised by petitioner in the Emergency Court of Appeals or decided inferentially by that court.

2. Whether the Administrator's determination that the "term" of complainant's lease did not commence on or prior to March 1, 1941, within the contemplation of an adjustment provision of Maximum Rent Regulation No. 35 was arbitrary, capricious, or otherwise contrary to law.

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, are set forth in the Appendix, *infra* pp. 10–13 and those of Maximum Rent Regulation No. 35 at pp. 49–51, and 59 of the Record.

STATEMENT

On July 24, 1942, the Administrator issued Maximum Rent Regulation No. 35, effective August 1, 1942, establishing maximum rents for housing accommodations other than hotels and rooming houses in the Milwaukee Defense-Rental Area (R. 44–59). For accommodations rented on March 1, 1942, the Regulation established as maximum legal rents those in effect on that date.[1]

[1] Section 1388.3054 (a), (R. 47).

Section 1388.3055 (a) of the Regulation provides nine grounds[2] on the basis of which landlords may obtain an upward adjustment of maximum rents so established (R. 49–51). Procedural Regulation No. 3 sets forth the administrative procedure for obtaining such an adjustment.[3]

On October 29, 1942, the petitioner, as owner of certain housing accommodations in the Area which were rented on the maximum rent date, filed with the Area Rent Director a petition for adjustment of its maximum rent pursuant to Section 1388.3055 (a) (5)[4] of Maximum Rent Regulation No. 35. This Section (R. 59) provides for the granting of an upward adjustment of a landlord's maximum rent if

> There was in force on March 1, 1942, a written lease, for a term commencing on or prior to March 1, 1941, requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on March 1, 1942 * * *.

In support of this petition it was alleged that (1) on March 1, 1942, petitioner's accommoda-

[2] On the date of the filing by petitioner of its petition for adjustment the Regulation provided seven grounds for adjustment of maximum rents (R. 49–51). Subsequently, two additional grounds were added, neither of which is material here.

[3] 7 F. R. 3936, 6081, 7149.

[4] Hereinafter referred to as "Section 5 (a) (5)."

tions were rented for $150.00 per month under a lease which had been in effect for more than one year prior to that date, the lease having been entered into originally on January 16, 1939, for a term of two years commencing May 1, 1939, and thereafter extended beyond March 1, 1942, by automatic operation of a renewal clause in the lease (R. 22), and that (2) the rents for comparable and identical accommodations in the same building were, on March 1, 1942, substantially higher than for the accommodations for which the increase was requested (R. 41).

On January 16, 1943, the Rent Director issued an order denying the petition (R. 43), and on February 1, 1943, petitioner filed a protest against that order with the Regional Administrator of the Office of Price Administration for the Sixth Region (R. 10).[5] The protest contained allegations substantially the same as those contained in the petition for adjustment (R. 11, 12). On May 21, 1943, the Regional Administrator issued an order denying this protest (R. 34). The denial of the protest, as explained in the opinion accompanying this order (R. 35–36), was based on the ground that the term of petitioner's lease did not commence on or prior to March 1, 1941, as required under Section 5 (a) (5) of Maximum Rent Regulation No. 35.

[5] Since the document filed by petitioner requested the Administrator to "review" the order of the Rent Director (R. 10), it was treated as a statutory protest pursuant to Section 11 of Procedural Regulation No. 3 (7 F. R. 3936, 6081, 7149).

On June 17, 1943, petitioner filed a complaint in the Emergency Court of Appeals, alleging that the Administrator was in error in failing to find that the lease under which its housing accommodations were rented on the maximum rent date was for a term commencing on or prior to March 1, 1941 (R. 1–4). On September 3, 1943, subsequent to the filing of briefs in the Emergency Court of Appeals by both petitioner and Respondent, petitioner filed a motion for leave to amend its complaint to set forth certain objections to the constitutionality of the Act (R. 61–62). This motion was denied by the court on September 23, 1943 (R. 63), and on November 2, 1943, the court dismissed the complaint, holding that the term of petitioner's lease did not commence on or prior to March 1, 1941, within the meaning of Section 5 (a) (5) of the Rent Regulation.

ARGUMENT

The decision of the Emergency Court of Appeals presents no issue of constitutional law and no issue of federal law of general significance. The validity of Maximum Rent Regulation No. 35 was not in issue in the proceedings before the Emergency Court of Appeals. Section 204 (a) of the Act prohibits the Emergency Court of Appeals from considering any objection to a Regulation or order unless such objection was first set forth in the protest underlying the complaint. Petitioner admits that its protest did not specifi-

cally set forth objections to the Regulation as required by Section 203 (a) of the Act, but argues that such a challenge was to be "naturally implied" from the protest (Pet. 17). The language of the protest does not, however, sustain this construction. The petitioner specifically alleged in the protest that it was directed against the order of the Rent Director; all of the objections set forth in the protest were directed against the order, not against the Regulation (R. 10). Moreover, Section 203 (a) requires a protest against the Regulation to be filed within a period of sixty days after the issuance of the regulation or order protested, unless grounds for protest arise after that period. The protest was filed more than six months after the issuance of the Regulation and is barren of any suggestion that it was based on new grounds. Since no objections against the Regulation were presented in the protest, none could be raised in the court below. Indeed, such objections were not even set forth in the complaint or in the proposed amendment thereto (R. 3–4, 61). Nor was the validity of the Regulation even impliedly ruled upon by the court below. The court expressly stated in its opinion (R. 65):

> What we said in *Armour & Co.* v. *Brown,* 137 F. (2d) 233 (1943) is applicable to this case: "A protest against an order denying an application for an adjustment does not open up for review the validity of the regulation itself, but only raises the question whether the Administrator was arbitrary

> and capricious in concluding that the applicant had failed to make out a case within the terms of the applicable adjustment provision."[6]

Similarly, the question of the constitutionality of the Act was neither raised by petitioner in its complaint nor passed upon by the court below. It is true that petitioner filed a motion in that court to amend its complaint in order to include certain objections to the constitutionality of the Act and that the motion was denied by the court without opinion. The denial of that motion will not be reviewed by this Court, however, as "the granting or refusal of leave to file an additional plea, or to amend one already filed, is discretionary with the court below, and not reviewable by this Court, except in a case of gross abuse of discretion." *Gormley* v. *Bunyan,* 138 U. S. 623, 630–631; *Chapman* v. *Barney,* 129 U. S. 677, 681; *Bullitt County* v. *Washer,* 130 U. S. 142, 145. In any event, the protest proceeding involved only the

[6] Contrary to petitioner's assertion that "this ruling of the Court amounts to a practical denial to virtually every person affected of ever having a Court's determination of the validity of the Regulation" (Pet. 15), the Administrator and the Emergency Court of Appeals have both recognized that the interpretation of ambiguous provisions may create new grounds for protest against the Regulation within the meaning of Section 203 (a) of the Act. *Galban Lobo Co. S. A.* v. *Henderson,* 132 F. (2d) 150, certiorari denied, 318 U. S. 756.

Furthermore, objections to the validity of the Act may be raised and considered as defenses in any court where proceedings are brought to enforce the Act.

question whether the Rent Director's order was in accordance with the adjustment provision.

The single issue properly presented to the Emergency Court of Appeals was whether the Administrator was arbitrary or capricious in concluding that the term of petitioner's lease did not commence on or prior to March 1, 1941, within the contemplation of Section 5 (a) (5) of the Rent Regulation. Accordingly, the court was not called upon to decide any question of local law; much less did it decide an important question of local law in conflict with local decisions or with any decision of this Court, as suggested by petitioner. As the court said in its opinion (R. 66): "It is recognized, of course, that matters concerning the title and disposition of real estate are determined by the law of the jurisdiction in which such property is located; but here the matter at issue concerns the interpretation of a regulation issued by a federal administrative agency." The sole effect of the decision was, therefore, to uphold the Administrator's interpretation of a section of the Rent Regulation in its application to the particular state of facts presented by petitioner's application for adjustment. Moreover, the court below was clearly right in holding that "the adjustment provision should have throughout the country a uniform interpretation conformable to the purposes of the rent regulation, irrespective of whether, under the law of a particular state, the

effect of the renewal clause would be to create a new term or to continue the old within the meaning of a local statute of frauds or recording act" (R. 66).[7]

CONCLUSION

The decision below is correct and does not warrant further review. The petition should therefore be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

RICHARD H. FIELD,
Acting General Counsel,
Office of Price Administration.

JANUARY 1944.

[7] The opinion below also answers the suggestion that under a loose reading of the adjustment provision relief should be afforded to a landlord who was bound by a lease executed at least a year prior to March 1, 1942. The petitioner could have given notice through March 1, 1941; the Wisconsin case cited by petitioner (Pet. 22, last line) indicates that the day for giving notice should be excluded in the computation; the opinion below does this, as 60 days remain after March 1, 1941, until the expiration of the original two-year term at the close of April 30, 1941. Petitioner was thus not bound for a year prior to March 1, 1942. Nor could its assent by silence to the renewal be deemed to become effective until the last moment of March 1, 1941, had expired, so that even any constructive execution of a new lease by silence was too late to come within any possible construction of the adjustment provision specifying a term commencing on or prior to March 1, 1941. The point is obviously of very particularized application.

APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23 as amended, c. 578, 56 Stat. 765, are as follows:

> Section 203 (a). Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in

respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

Section 204 (a). Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided,* That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any

objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

Section 204 (d). Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders

of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

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